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Supreme Court, U.S.
FILED
MAR 21 2001
CLERK

No. 00-1240

IN THE
Supreme Court of the United States

TRI-STATE COACH LINES, *et al.*,
Petitioners,

v.

METROPOLITAN PIER AND EXPOSITION AUTHORITY,
Respondent.

On Petition for a Writ of Certiorari to the Appellate Court of Illinois, First District

BRIEF OF THE AMERICAN BUS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

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BRIEF OF THE AMERICAN BUS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

Pursuant to Rule 37 of the Rules of this Court, the American Bus Association, Inc. ("ABA") respectfully submits this brief as amicus curiae in support of the petition for a writ of certiorari, which seeks this Court's review of a decision that would largely nullify the protections of a federal statute of the greatest importance to the intercity bus industry. Letters indicating the consent of the parties to the filing of this brief have been filed with the Clerk of the Court.[1]

[1] No part of this brief was authored by counsel for any party to this case and no person or entity other than ABA made any monetary contribution to the preparation and submission of this brief. *See* Rule 37.6 of the Rules of the Supreme Court.

INTEREST OF THE *AMICUS CURIAE*

ABA is the principal national trade association for the intercity bus industry. ABA's members include more than 800 bus companies, all of whom are engaged in the interstate transportation of passengers by motor vehicle. ABA's members operate more than 20,000 buses, in both charter and scheduled service, and they provide more than 90 percent of intercity bus transportation in the United States. Many of ABA's members also provide shuttle services to and from airports and railroad stations.

The bus industry is by some measures the largest commercial transporter of passengers in the United States. A recent survey estimates that intercity motorcoaches, which do not include local transit buses or school buses, transported more than 774 million passenger-trips in the United States in 1999.[2] Also, as airline deregulation over the last two decades has reduced air travel to many communities, intermodal transportation—*i.e.*, trips by bus and air or by bus and train—has played an increasingly vital role in transporting passengers in interstate and international travel.

The issue in this case is of vital importance to ABA's members and the people who ride their buses. The court below held that a tax imposed by respondent Metropolitan

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[2] "Motorcoach 2000 Census" by R.L. Banks & Associates (July 2000) at 2, 10. This figure is for all trips by "motorcoach," defined as "a vehicle designed for long distance transportation of passengers, characterized by integral construction with an elevated passenger deck located over a baggage compartment . . . at least 35 feet in length and carries more than 30 passengers." The figure includes commuter and charter trips by commercial motorcoach but does not include trips in transit buses or school buses. By comparison, commercial airlines in the United States carried only 568 million passenger trips in 1999, and Amtrak carried only 377 million. These figures and other facts about the bus industry are set forth in the "Industry Profile and Safety" site on ABA's website, www.buses.org.

Pier and Extension Authority ("MPEA") on the motor vehicle transportation of passengers for hire from Chicago's O'Hare and Midway airports does not violate 49 U.S.C. § 14505 even when the motor vehicle trips are to out-of-state destinations or are part of a prearranged, continuous air-surface interstate trip. 49 U.S.C. § 14505 expressly prohibits states and subdivisions of states from imposing any "tax, fee, head charge, or other charge" on, among other things, "the transportation of a passenger traveling in interstate commerce by motor carrier." This provision was enacted by Congress in 1995 at the urging and with the strong support of ABA specifically to protect motor carriers of interstate passengers from just such exactions as the MPEA tax involved in this case. The conclusion of the Illinois Appellate Court that § 14505 does not bar the application of the MPEA tax to what ABA submits is clearly interstate motor carrier transportation would largely eviscerate the protections § 14505 was enacted to provide. That result would have the gravest consequences for the nation's commercial bus operators, who have been struggling for decades to maintain ridership in the face of thin margins and intense competition from other transportation modes. ABA and its members have a vital interest in ensuring that § 14505 is construed and applied as Congress intended.

STATEMENT OF THE CASE

The facts are set forth more fully in the Petition. We confine our discussion of them here to what ABA submits are the most significant features of the MPEA tax at issue and of the decision below.

The MPEA's "Airport Departure Tax Ordinance" is not imposed on all persons departing O'Hare and Midway airports. Instead, by its terms and in accordance with the

authorizing statute,[3] it is imposed only on "persons, other than a governmental agency, engaged in the business of providing ground transportation to passengers for-hire," and only when such persons depart the airport with paying passengers. The rate of the tax increases with the capacity of the vehicle, except that if the carrier is providing scheduled service regulated by the Interstate Commerce Commission [4] or the Illinois Commerce Commission, the tax is $1 per passenger.

Petitioners challenged the validity of the tax under 49 U.S.C. § 14505 on behalf of two subclasses of motor carriers: Class A are those who are taxed "on the act of departing O'Hare and Midway Airports with passengers for-hire for destinations outside Illinois"; Class B are those who are taxed "on the act of departing O'Hare and Midway Airports with passengers for-hire for destinations within Illinois, where the passengers have prearranged their ground transportation as part of interstate and/or foreign travel by air . . . [or] are traveling on a through ticket pursuant to a motor carrier and airline master purchase of service agreement embracing both interstate and/or foreign travel by air and motor carrier transportation." Pet App. 36a-37a.

The Circuit Court of Cook County held the MPEA tax invalid under 49 U.S.C. § 14505 as to Class A but not as to Class B. Pet. App. 30a-34a. The Illinois Appellate Court held that MPEA tax valid as to both classes. *Id.* at 1a-29a. It is important to identify the grounds for the Appellate Court's

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[3] Illinois Metropolitan Pier and Exposition Authority Act, 70 ILCS 210/13(f) (West 1994), reproduced at Pet. 4-5.

[4] The Interstate Commerce Commission was abolished by the Interstate Commerce Commission Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) ("ICCTA"), and most of its remaining regulatory functions relating to motor carriers were transferred to the United States Department of Transportation.

ruling as to each class. Although masked by a good deal of verbiage, the grounds are apparent on close examination.

The court addressed Class B first, and it identified the issue as whether motor carriage within Illinois as part of a prearranged interstate or international trip by air and motor carrier constituted "the transportation of a passenger traveling in interstate commerce by motor carrier" within the meaning of § 14505 (2). Pet. App. 15a-17a. As to that issue, the court found the language of § 14505 (2) ambiguous, thus permitting resort to the legislative history of the statute. *Id.* at 18a. Citing congressional committee reports, the court concluded that the purpose of the statute was to overrule this Court's decision in *Oklahoma Tax Commission v. Jefferson Lines, Inc.*, 514 U.S. 175 (1995). Because this Court in *Jefferson Lines* held that an Oklahoma sales tax on the full price of a ticket for an interstate trip did not violate the Commerce Clause, the Illinois Appellate court concluded that

> Congress' *exclusive* focus in enacting section 14505 was to ensure that the tickets for interstate city-to-city bus trips, trips often passing through multiple states and having minimal contact with the state of their origin, were not taxed by the originating state in a manner disproportionate to the benefits received in that state. Stated another way, the "particular evil" that section 14505 was intended to remedy was a state's imposition of a sales tax upon the whole price of an interstate bus ticket where the contact of the interstate bus trip with the taxing state was minor.

Id. at 20a (emphasis added). Based on this view of the exclusive purpose of § 14505, the court concluded that the statute did not apply to "the type of travel represented by Class B in the present case," *i.e.*, where the motor transportation was entirely within one state, even if it was part of a prearranged interstate trip. *Id.*

The court then addressed Class A and also upheld the MPEA tax even as applied to trips where the motor carriage itself crossed state lines. It based this ruling, first, on its earlier stated view of the purpose of statute as ensuring only "that one state might not disproportionately tax the purchase of bus tickets for travel through multiple states." Pet. App. 24a. Trips from O'Hare and Midway to destinations in "southern Wisconsin, or northern Indiana," the court observed, "are not analogous nor comparable to the type of city-to-city interstate bus trips of the type considered by the Supreme Court in [*Central Greyhound Lines, Inc. v. Mealy*, 334 U.S. 653 (1948)] or *Jefferson Lines* and focused on by Congress when enacting section 14505—trips where buses rather than aircraft were the means by which passengers engaged in long-distance, state-to-state travel." *Id.* Second, the court ruled that § 14505 had no application to the MPEA tax, which, the court held, "is imposed not on the *transportation* of passengers in interstate commerce but upon the *departures* of commercial vehicles from O'Hare and Midway. In other words, the 'taxable event' to which the airport departure tax attaches is not the interstate transportation of passengers but, rather, the ground transportation departures from the airport." *Id.* at 25a.

The foregoing are the essential grounds for the Appellate Court's decision. The court's opinion went on to discuss the fact that other federal statutes exempt taxicab service and motor carriage incidental to air transportation from *federal economic* regulation, but it does not explain how this discussion has any relevance to the scope of § 14505's protection of motor carriers from *state taxation* of their interstate transportation services. Pet App. 26a-28a.

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW PRESENTS IMPORTANT QUESTIONS WARRANTING THIS COURT'S REVIEW.

The Illinois Appellate Court's decision presents important questions concerning the scope and effectiveness not only of the recently enacted 49 U.S.C. § 14505 but also of the statute on which it was closely modeled, 49 U.S.C. § 40116(b), which has similarly protected air transportation of passengers from state taxation since it was enacted in 1973.

The principal basis for the court's decision was its conclusion that § 14505 does not apply to every tax, fee or charge upon the motor carrier transportation of passengers in interstate commerce, but only to taxes or fees on such transportation where the court finds that the tax is "disproportionate to the benefits received [by the taxpayer] in [the taxing] state" or finds that "the contact of the interstate bus trip to the taxing state was minor." Pet. App. 20a. The words of § 14505 contain no such limiting qualifications; instead, they broadly prohibit states from imposing any tax, fee, head charge or other charge on, among other things, "the transportation of a passenger traveling in interstate commerce by motor carrier." The terms of the statute would thus appear to bar a state tax on *any* interstate transportation, without regard to whether the part of the interstate trip in the taxing state was deemed "minor," "major," "proportionate" or "disproportionate." That was certainly ABA's understanding when it urged Congress to enact § 14505.

Whether § 14505 embodies the significant limitation attributed to it by the court below despite its plain language presents an extremely important question for all motor carriers providing interstate transportation, as well as for states who may wish to tax such transportation. Such a limitation would drastically curtail the scope of the statute

from the reach its language would indicate. Furthermore, it would make the application of the statutory protections vastly more difficult and uncertain. In each case, courts would have to determine not simply whether the transportation being taxed was interstate transportation, but whether the portion of the transportation occurring in the taxing state was "minor" and whether the taxes received by the taxing state were "disproportionate" to the benefits received in that state by the taxpayer. Rather than the straightforward, workable protections ABA and others supporting the enactment of § 14505 believed they would be receiving, the statute as construed by the Appellate Court would require courts to determine potentially difficult factual issues and apply them against exceedingly vague standards.[5]

The second basis for the Appellate Court's decision, which it applied to uphold the tax as to operators in Class A, presents equally important questions warranting this Court's review. The court held that the MPEA tax was not subject to § 14505 because it is not really a tax on transportation of passengers at all, but instead is merely a tax on "ground transportation departures from the airport." Pet. App. 25a. If this ruling is correct, the court below would have uncovered a huge, unsuspected loophole in § 14505, as well as in 49 U.S.C. § 40116 (b), the airline statute on which it was modeled. As noted in the Statement, the MPEA tax is not imposed on all persons using or departing O'Hare and Midway airports, but is imposed only on persons engaged in the business of providing ground transportation for hire to passengers, and only when such persons depart the airport with paying passengers. The amount of the tax depends either on the passenger capacity of the vehicle or the number

[5] Furthermore, the courts making these determinations would usually be the courts of the taxing states in view of the barriers to federal court jurisdiction erected by the Eleventh Amendment and the Federal Tax Injunction Act, 28 U.S.C.§ 1341.

of passengers being carried. If such a tax can evade the application of § 14505 on the ground that it is not a tax on the transportation of passengers but only a tax on airport departures, it is difficult to see what tax on transportation could not be recast or redescribed to effect a similar evasion.[6]

Furthermore, the decision below would enable states and localities easily to effect similar evasions of the ban on taxation of air passenger transportation in 49 U.S.C. § 40116 (b), which this Court reviewed and applied in *Aloha Airlines v. Director of Taxation of Hawaii*, 464 U.S. 7 (1983). Instead of directly taxing the air passengers or the air transportation and collecting the tax through the airlines, which § 40116 (b) prohibits, states or localities could do so indirectly by enacting "airport departure taxes" like the MPEA tax in this case and collect the taxes from the ground transportation companies that transport the airline passengers from their destination terminals. In fact, under the rationale of the decision below, states could collect passenger taxes or fees directly from the airline simply by styling them as a charge not on air transportation but upon the aircraft's "departure" from the airport.

The decision below has implications far beyond the MPEA tax at issue in this case. The reasoning of the Illinois Appellate Court would apply directly to, and have significant consequences for, hundreds of state and local taxes, fees and other charges that interstate motor carriers of passengers are actually or potentially subject to throughout the United States.

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[6] For example, although § 14505 was clearly intended to ban state sales taxes on bus interstate bus tickets, which were upheld against a Commerce Clause challenge in *Jefferson Lines*, such taxes could be recast as taxes on the departures of buses from bus terminals and, under the decision below, thereby pass muster under § 14505.

These include not only general sales taxes but also numerous taxes applied specifically to airport shuttle services.[7]

The importance of the questions presented and the far-reaching implications of the decision below warrant this Court's review. State and local taxes impose very substantial costs on interstate bus companies, and § 14505 imposes limitations on those taxes that are extremely important to the bus industry and the public it serves. The decision below threatens greatly to erode those protections, and it stands as an invitation to other states and localities to enact similar taxes or to apply existing ones in inappropriate ways.[8]

II. THE ILLINOIS APPELLATE COURT'S DECISION CONFLICTS WITH THE PLAIN LANGUAGE OF 49 U.S.C. § 14505 AND WITH MANY DECISIONS DEFINING INTERSTATE COMMERCE.

The decision below is also, ABA submits, clearly erroneous. It conflicts with the plain language of § 14505 as well as with numerous decisions, beginning with *United States v. Yellow Cab*, 332 U.S. 218 (1947), holding that a

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[7] A 1998 survey of 70 airports in the United States performed by the Airport Ground Transportation Association found that the large majority of them impose some form of ground transportation charge on commercial motor carriers serving the airports. "1998 Airport Ground Transportation Fees and Fares Survey" by Airport Ground Transportation Association (November 16, 1998).

[8] While the decision below does not yet conflict specifically with other decisions applying the recently-enacted § 14505, its construction of the term "interstate commerce" does, as we show in the following section, conflict with numerous decisions applying that term in other federal statutes. We also note that the importance of similar questions concerning the scope of 49 U.S.C. § 40116 (b) warranted this Court's review in *Aloha Airlines* despite the absence of conflicting lower court decisions construing that statute. The questions presented here are equally important to the nation's bus industry.

continuous, pre-arranged or commonly ticketed interstate trip is transportation in "interstate commerce."

Section 14505 expressly provides;

> A State or political subdivision thereof may not collect or levy a tax, fee, head charge, or other charge on—
>
> (1) a passenger traveling in interstate commerce by motor carrier;
>
> (2) the transportation of a passenger traveling in interstate commerce by motor carrier;
>
> (3) the sale of passenger transportation in interstate commerce by motor carrier; or
>
> (4) the gross receipts derived from such transportation.

Nothing in the language or the legislative history of this provision supports the Appellate Court's ruling that § 14505 applies only where the portion of the interstate trip in the taxing state is "minor" or where the tax is "disproportionate" to the benefits received by the taxpayer in the taxing state. The gloss put on the plain language of this provision by the court below is as unsupportable as the Hawaii Supreme Court's construction of 49 U.S.C. § 40116 (b) that this Court reversed in *Aloha Airlines*. In that case, the Hawaii Supreme Court relied on the legislative history of § 40116 (b) (then codified at 49 U.S.C.§ 1513(a)) to conclude that that section was not intended, despite its plain terms, to apply to gross receipts taxes. In reversing, this Court stated:

> [W]hen a federal statute unambiguously forbids the States to impose a particular kind of tax on an industry affecting interstate commerce, courts need not look beyond the plain language of the federal statute to determine whether a state statute that imposes such a tax is preempted.

464 U.S. at 12.

The same principle applies fully here. Contrary to the Appellate Court, there is no ambiguity in the language of § 14505 requiring the court to look beyond its terms. The term "interstate commerce" in the statute has a well-settled meaning that clearly encompasses the transportation provided by operators in both Class A and Class B. The motor transportation provided by Class A members is between Illinois and other states, and there is certainly no ambiguity that such transportation is in interstate commerce. As to Class B, many cases have settled the proposition that a continuous journey between two states via two or more modes which has been prearranged or is under a single ticket is an interstate journey. *See, e.g., Yellow Cab,* 332 U.S. at 228; *Executive Town and Country Services v. City of Atlanta*, 789 F.2d 1523 (11th Cir. 1986); *Charter Limousine v. Dade County Board of Tax Commissioners*, 678 F.2d 586, 589 (5th Cir. 1982); *Southerland v. St. Croix Taxicab Association*, 315 F.2d 364 (3d Cir. 1963). It may reasonably be presumed that Congress drafted and enacted § 14505 against the background of this well-settled construction of the term "interstate commerce." It is a familiar principle of statutory construction that when the words of a statute have "a judicially settled meaning, . . . we must presume it was used in that sense by Congress." *United States v. Merriam*, 263 U.S. 179, 187 (1923). See also, *e.g., Commissioner of Internal Revenue v. Keystone Consolidated Industries, Inc.*, 508 U.S. 152, 159 (1993). The opinion of the Appellate Court, however, makes no reference to the many decisions interpreting "interstate commerce" to include prearranged or commonly ticketed trips, although petitioners urged them strongly upon it.[9]

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[9] The Appellate Court's opinion appears to have found the term "interstate commerce" to be ambiguous only with respect to the transportation provided by Class B members. *See* Pet. App. 17a-18a. Neither the court nor MPEA contended that transportation provided by Class A members was not interstate commerce. Yet the court relied on its

In any event, even if it were appropriate to look beyond the plain language of the statute, nothing in the legislative history supports the gloss the Appellate Court placed upon it. It is certainly true, as the pertinent committee reports indicate, that Congress enacted § 14505 in response to this Court's decision in *Jefferson Lines*, which held that a state sales tax on the sale of an interstate bus ticket did not violate the dormant Commerce Clause. And it is also true that at least part of Congress' purpose was to overturn the result of that case. But it is manifestly *not* true that Congress intended the protections of the statute to apply only to the kind of taxes involved in that case and only to the kind of transportation involved in that case. Nothing in the reports or other legislative history suggests such an intent, and the imputation of such an intent is refuted by the plain language of the statute, which broadly prohibits not only sales taxes but also any "tax, fee, head charge or other charge" on four specified activities, including both sales of and gross receipts derived from the transportation of passengers traveling in interstate commerce.

The broad and encompassing terms of § 14505 clearly indicate Congress' intent to bar any form of charge imposed by states and their political subdivisions on the motor carrier transportation of passengers in interstate commerce. The breadth of these terms also refute the second holding of the Appellate Court, that a charge can evade the application of § 14505 by denominating itself a charge on "departures" rather than on "transportation." If they are not to be defeated by mere semantics, the protections of § 14505 must turn on the substance of the activity being taxed, and the substance of the activity taxed by the MPEA tax here is the transportation

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view of the legislative history to conclude that the statute did not apply to the transportation provided by both classes. *Id.* at 20a-21a.

of passengers for hire by motor vehicle. *See Aloha Airlines*, 464 U.S. at 13-14.[10]

Finally, there is no merit in the Appellate Court's reliance on the scope of various statutes exempting taxi service and motor carriage incidental to air from *federal economic* regulation of rates, routes and services as supporting its construction of § 14505's ban on *state taxation* of interstate motor carrier transportation of passengers. What Congress chooses to subject to federal economic regulation has nothing to do with what Congress may choose to restrict states from taxing. *Buck v. California*, 343 U.S. 99 (1952), cited by the court below (Pet. App. 26a) was decided long before § 14505 was enacted and has no bearing on the issue in this case.

In sum, like the Hawaii Supreme Court decision reversed in *Aloha Airlines*, the Illinois Appellate Court has strained for reasons to find a federal tax preemption statute inapplicable to taxes and to transportation that the unambiguous words of the statute appear clearly to cover. The court below erred both in going beyond the statutory language and in the reasons given for its strained construction.

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[10] In *Aloha Airlines* and other cases construing and applying 49 U.S.C.§ 40116 (b), the airline counterpart of § 14505, courts have consistently held that the scope of the statute turns on the substance of what is being taxed, not on '[t]he manner in which state legislature has described and categorized" the tax (464 U.S. at 13), and that taxes that are triggered or measured by the air transportation of passengers come within the reach of that statute's prohibitions. *See also Alaska Airlines v. Department of Food and Agriculture*, 33 Cal. App.4th 506, 513 (Cal. App. 1995); *United Airlines v. County of San Diego*, 1 Cal. App.4th 418, 430-431 (Cal. App. 1991).

CONCLUSION

The Court should grant the petition for a writ of certiorari in this case.

Respectfully submitted,

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